

~AO 241

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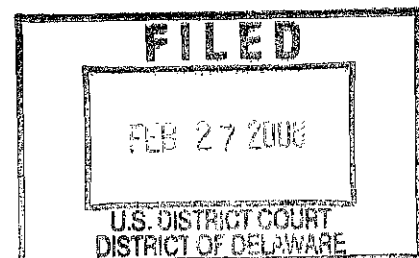
ORIGINAL**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY****08 - 117 -**

United States District Court		District:
Name (under which you were convicted): CLARENCE H. EDWARDS		Docket or Case No:
Place of Confinement : SMYRNA DELAWARE		Prisoner No.: 00158551
<p><i>Petitioner (include the name under which you were convicted) custody of petitioner)</i> <i>Respondent (authorized person having custody of petitioner)</i></p> <p>CLARENCE H. EDWARDS v. STATE OF DELAWARE</p>		
The Attorney General of the State of DELAWARE		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
KENT COUNTY DELAWARE SUPERIOR COURT
(b) Criminal docket or case number (if you know): 0504022745
2. (a) Date of the judgment of conviction (if you know): 8/23/2005
(b) Date of sentencing: 8/23/2005
3. Length of sentence: 10 YEARS
4. In this case, were you convicted on more than one count or of more than one crime? ☐ Yes ☒ No
5. Identify all crimes of which you were convicted and sentenced in this case:
SEXUAL SOLICITATION OF A CHILD
6. (a) What was your plea? (Check one)

<input type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Nolo contendere (no contest)
<input checked="" type="checkbox"/> (2) Guilty	<input type="checkbox"/> (4) Insanity plea



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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?
N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☐ Yes ☒ No

9. If you did appeal, answer the following:

(a) Name of court:

(b) Docket or case number (if you know):

(c) Result::

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised:

(g) Did you seek further review by a higher state court? ☐ Yes ☒ No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

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(5) Citation to the case (if you know):

(6) Grounds raised:

(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11 If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: KENT COUNTY SUPERIOR COURT

(2) Docket or case number (if you know): IK-05-0179-R1

(3) Date of filing (if you know): FEB./2006

(4) Nature of the proceeding: RULE 35 POST CONVICTION

(5) Grounds raised: RULE 35 VIOLATION LEADING TO INEFFECTIVE

COUNSEL

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: AFFIRMED

(8) Date of result (if you know): 8/17/2007

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(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: **DELAWARE SUPREME COURT**
- (2) Docket or case number (if you know): **445-2007**
- (3) Date of filing (if you know): **10/19/2007**
- (4) Nature of the proceeding: **RULE 35 POST CONVICTION**
- (5) Grounds raised: **RULE 35 VIOLATION LEADING TO INEFFECTIVE**

COUNSEL

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: **AFFIRMED**

(8) Date of result (if you know): **1/3/2008**

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court: **N/A**
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:

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(6) Did you receive a hearing where evidence was given on your petition,
application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition,
application,
or motion?

(1) First petition: ☒ Yes ☐ No

(2) Second petition: ☐ Yes ☐ No

(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: SEE ATTACHED

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): SEE ATTACHED

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **Direct Appeal of Ground One:**(1) if you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No(2) if you did not raise this issue in your direct appeal, explain why: I WAS TOLD BY
COUNSEL NO APPEAL COULD BE DONE.(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) if your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: POST CONVICTION (61) MOTION

Name and location of the court where the motion or petition was filed: KENT COUNTY SUPERIOR
COURT DOVER DELAWARE

Docket or case number (if you know): IK-05-0179-R1

Date of the court's decision: 8/17/2007

Result (attach a copy of the court's opinion or order, if available): AFFIRMED

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d) (4) is "Yes," did you raise this issue in the appeal ☒ Yes ☐ No

(6) If your answer to Question (d) (4) is "Yes," state:

Name and location of the court where the appeal was filed: DELAWARE SUPREME COURT

Docket or case number (if you know): 445-2007

Date of the court's decision: 1/3/2008

Result (attach a copy of the court's opinion or order, if available): AFFIRMED

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

GROUND TWO: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d) (1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes

☐ No

(4) Did you appeal from the denial of your motion or petition

☐ Yes

☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes

☐ No

(6) If your answer to Question (d) (4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d) (4) or Question (d) (5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

GROUND THREE: N/A

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why?

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes

☐ No

(2) If your answer to Question (d) (1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes

☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes

☐ No

(5) If your answer to Question (d) (4) is "Yes," did you raise this issue in the appeal?

☐ Yes

☐ No

(6) If your answer to Question (d) (4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

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(7) If your answer to Question (d) (4) or Question (d) (5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used exhaust your state remedies on Ground Three:

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue

☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d) (4) or Question (d) (5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:
 - (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No
 If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:
 - (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them: N/A
14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No
 If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A
15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☒ Yes ☐ No
 If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised. U.S. DISTRICT COURT DISTRICT OF DELAWARE PROCEEDURAL VIOLATIONS AGAINST DEFENSE ATTORNEY.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: KATHLEEN K. AMALFITANO
PUBLIC DEFENDER

(b) At arraignment and plea: KATHLEEN K. AMALFITANO
PUBLIC DEFENDER

(c) At trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?

☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

N/A

*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of:
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:
or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for

Writ of Habeas Corpus was placed in the prison mailing system on (month, date, year).

Executed (signed) on (date).

2/25/2008

x Clarence H Edwards

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

IN FORMA PAUPERIS DECLARATION
DELAWARE DISTRICT COURT

[insert appropriate court]

ATTACHED FOR # 12

GROUND ONE

**STRUCTURAL DEFECT OF CONSTITUTIONAL LAW LEADING TO
INEFFECTIVE COUNSEL**

(a) SUPPORTING FACTS:

PETITIONER WAS ARRESTED ON 4/28/2005 AND WAS APPOINTED KATHEREEN AMALFITANO, ESQUIRE, AS HIS ATTORNEY. THE ATTORNEY DID SUBPAR INVESTIGATION AND WITH HER OWN WORDS FAILED TO INFORM HIM OF HIS RIGHTS (SEE ATTACHED STATEMENT) PRIOR TO SIGNING THE PLEA AGREEMENT AS EVIDENCED IN THE DATES OF THE TIS AND PLEA FORMS. MS. AMALITANO AND MR. WILLIAMS ARGUED THAT BECAUSE OF THE PETITIONER'S NEEDS FOR MORE TIME (SEE CRIMINAL DOCKET # 8) TO DECIDE IF HE WAS TO PLEAD GUILTY THE ARRAIGNMENT OF 7/26/2005 WAS CONTIUED TO 8/23/2005. HOWEVER, PETITIONER DOES NOT ARGUE THIS POINT BUT HE DOES ARGUE WHY THE DEFENSE ATTORNEY HAD HIM SIGN THE PLEA AGREEMENT ON 7/26/2005 PRIOR TO GIVING HIM HIS RIGHTS TO KNOW HIS CONSTITUTIONAL RIGHTS CONCERNING HIS PLEA SIGN OFFS (SIGNED 8/23/2005). NOW COUNSEL ARGUES IN HER OWN WORDS THAT PETITIONER FILLED OUT THIS PAPER WORK BY HIMSELF AND PETITIONER WISHES TO ASK THE COURT HOW CAN A PERSON WITH A 4TH GRADE EVALUATION (SEE ATTACHED) KNOW HIS RIGHTS AND FILL OUT LEGAL PAPERS BY HIMSELF. AND IF THIS WAS TRUE WHY SHE SIGNED THIS FORM CONFIRMING THE DATE AND THAT HE WAS TOLD HIS RIGHTS WHEN SHE UNDER OATH WROTE SHE HAD NOTHING TO DO WITH THE TIS FORM. PETITIONER ALSO ARGUES THE

FACT THAT IF THERE WAS A MORE TIME ALLOTTED HIM DOES IT STRIP HIS RIGHTS TO HAVE THESE ISSUES OF CONSTITUTIONAL PROTECTIONS EVAPORATE BECAUSE OF THIS DELAY? THE PLEA AGREEMENT WAS SIGNED PRIOR TO HIS RIGHTS BEING TOLD HIM AND THE DEFENSE AND PROSECUTION REALIZING THE LOW INTELIGENCE OF PETITIONER SAW THAT THERE HAD BEEN A MISTAKE DONE BY NOT ADVISING PETITIONER OF HIS RIGHTS PRIOR TO HIS SIGNING OF THE PLEA AGREEMENT SO BEFORE HE ADDRESSED THE JUDGE RUSHED TO GET THIS TIS FORM DONE TO MAKE EVERYTHING "LEGAL".THE DEFENSE ATTORNEY ALONG WITH THE PROSECUTOR BOTH SIGNED THESE FORMS CONFIRMING THE TRUTHFULNESS OF ALL THAT WAS INCLUDE IN THEM –EVEN THE DATES SIGNED. THE COMMISSONER RECOMMENDED THAT THE POST CONVICTION BE DENIED FOR REASONS OF NOT BELIEVING PETITIONER OVER DEFENSE ATTORNEY (?) HOWEVER, PETITIONER BELIEVES IT'S NOT AN ISSUE OF WHO'S TELLING THE TRUTH. IF THE CONTINUANCE WAS GRANTED, AND IT WAS, THEN THE PETITIONER HAD A GIVEN RIGHT TO KNOW HIS RIGHTS PRIOR TO SIGNING THE PLEA AGREEMENT. IN THIS CASE THAT RIGHT WAS TAKEN AWAY A DIRECT VIOLATION OF THE 6TH & 5TH AMENDMENTS OF EFFECTIVE COUNSEL AT ALL STAGES WITH THE RIGHT TO KNOW YOUR RIGHTS BEFORE YOU SIGN THEM AWAY. THE PETITIONER ALSO ADVISED THE COURT THAT UPON SIGNING THE PLEA AGREEMENT WAS TOLD TO AGREE WITH ANYTHING THE JUDGE ASKS OR HE WOULD GIVE MORE TIME AND TO TELL HIM HE WAS SATISFIED WITH COUNSEL AND SHE TOLD HIM EVERYTHING HE NEEDED TO KNOW. AGAIN THE COMMISONER BELIEVED THE ATTORNEYS. WE KNOW THAT CHILD SEX CRIMES AT A HUGH TABOU IN

OUR SOCIETY, BUT, IT DOES NOT ELIMINATE THE
CONSTITUTIONAL RIGHTS OF AN INDIVIDUAL ACCUSED OF
SUCH AN EVIL CRIME. PETITIONER IS NOT ASKING TO BE
RELEASED OR HIS CHARGES TO BE DROPPED, ONLY THAT HIS
GIVEN RIGHTS BE GIVEN HIM. REMAND FOR A NEW PLEA OR
TRIAL WITH HIS GIVEN RIGHTS.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,

Plaintiff,

v.

CLARENCE EDWARDS,

Defendant.

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Case No. 0504022745

AFFIDAVIT OF KATHLEEN K. AMALFITANO, ESQUIRE

BE IT REMEMBERED that on this 3rd day of March, 2006, personally appeared before me a Notary Public for the State of Delaware, Kathleen K. Amalfitano, who stated the following:

1. This Affidavit is being filed pursuant to an Order of Commissioner Andrea Maybee, that I respond to the portions of the defendant's Motion alleging ineffective assistance of counsel, pursuant to Rule 61(g)(2).

2. Affiant responds seriatim to the allegations against her, as are contained in Defendant's Memorandum of Law pursuant to Superior Court Criminal Rule 61(b)(6) Motion for Postconviction Relief.

(1) At Ground One, Edwards alleges "coerced confession or guilty plea" as a ground to attack his guilty plea. A plea offer was extended to Edwards on July 26, 2005. Edwards wanted time to think about same, therefore, a new date was given for August 23, 2005. Edwards entered the plea at that time.

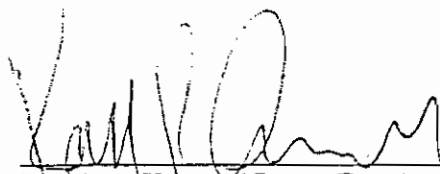
(2) At Ground Two, Edwards alleges that he was denied his right to confront

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witnesses. The fact of his plea is a matter of record. The plea colloquy would indicate that he completed the truth-in-sentencing form himself and was aware of all his trial rights including his right to confront witnesses. He understood by entering his plea he was waiving his right to confront those witnesses.

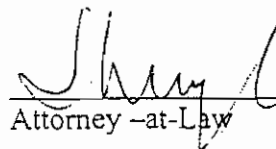
(3) At Ground Three, Edwards alleges ineffective assistance of counsel.

Edwards alleges he was not advised of his due process rights prior to entering his plea. The plea colloquy would indicate that the truth-in-sentencing form was properly executed prior to the entry of his plea and same thoroughly reviewed with him during said plea colloquy.



Kathleen K. Amalfitano, Esquire
Assistant Public Defender
Public Defender's Office
Sykes Building
45 The Green
Dover, DE 19901

SWORN TO AND SUBSCRIBED before me this 3rd day of March, 2006.



Attorney-at-Law

10/30/2007 TUE 10:29 FAX

C C

SUPERIOR COURT CRIMINAL DOCKET
(as of 09/06/2007)

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State of Delaware v. CLARENCE H EDWARDS
State's Atty: ROBERT J O'NEILL , Esq.
Defense Atty: KATHLEEN AMALFITANO , Esq.

AKA:

DOB: 05/30/1961

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	0504022745	IK05050179R1	SEX SOLIC CHILD	GLTY	08/23/2005
002	0504022745	IK05050180	INDEC.EXPO.1ST	NOLP	08/23/2005
003	0504022745	IK05050181	HARASSMENT	NOLP	08/23/2005

COPY

No.	Event Date	Event	Judge
1	05/09/2005	CASE ACCEPTED IN SUPERIOR COURT. ARREST DATE: 04/28/2005 PRELIMINARY HEARING DATE: 05/06/05 BAIL: CASH BAIL	7,000.00 100%
2	05/10/2005	MOTION TO INCREASE BAIL FILED. (S. BONVETTI)	
3	05/13/2005	MOTION TO INCREASE BAIL GRANTED. BAIL INCREASED TO CASH BAIL	YOUNG ROBERT B. 15,000.00 100%.
4	07/05/2005	INDICTMENT, TRUE BILL FILED.	
5	07/07/2005	SUMMONS MAILED TO DEFENDANT AND BONDSPERSON FOR APPEARANCE IN COURT ON 7/14/05 FOR ARRAIGNMENT	
6	07/14/2005	ARRAIGNMENT CALENDAR - CONTINUED. DEFENSE REQUEST-DEFENDANT NOT TRANSPORTED. ARRAIGNMENT PASSED TO CASE REVIEW.	FREUD ANDREA MAYBEE
7	07/15/2005	SUBPOENA MAILED TO BONDSPERSON FOR DEFENDANT'S APPEARANCE AT ARRAIGNMENT/CASE REVIEW 7/26/05	
8	07/26/2005	ARRAIGNMENT/CASE REVIEW CALENDAR-CONTINUED TO 08/23/05. DEFENDANT NEEDS MORE TIME	YOUNG ROBERT B.
9	08/16/2005	SUBPOENA(S) MAILED TO DEFENDANT AND BONDSPERSON FOR APPEARANCE IN COURT ON AUGUST 23, 2005 FOR ARRAIGNMENT/CASE REVIEW.	
10	08/23/2005	CASE REVIEW CALENDAR - PLED GUILTY AND SENTENCED.	WITHAM WILLIAM L. JR.
11	09/30/2005	MOTION FOR REDUCTION OF SENTENCE FILED (PRO SE).	

Exhibit A

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JUN 20 2008

SUPERIOR COURT CRIMINAL DOCKET
(as of 09/06/2007)

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State of Delaware v. CLARENCE H EDWARDS
State's Atty: ROBERT J O'NEILL , Esq.
Defense Atty: KATHLEEN AMALFITANO , Esq.

DOB: 05/30/1961

AKA:

No.	Event Date	Event	Judge
12	10/04/2005	STATE'S RESPONSE TO MOTION FOR REDUCTION OF SENTENCE FILED (O'NEILL).	
13	02/21/2006	MOTION FOR POSTCONVICTION RELIEF FILED (PRO SE).	
14	02/24/2006	MOTION FOR REDUCTION OF SENTENCE DENIED 2/22/2006.	WITHAM WILLIAM L. JR.
15	02/24/2006	ORDER OF REFERENCE AND NOW THIS 22ND DAY OF FEBRUARY, 2006, MOTION FOR POSTCONVICTION RELIEF IS REFERRED TO COMMISSIONER ANDREA MAYBEE FREUD FOR PORPOSED FINDINGS AND RECOMMENDATIONS PURSUANT TO 10 DEL.C. SECTION 512(B)(1) (B) AND CRIMINAL RULE 62(A)(5).	WITHAM WILLIAM L. JR.
x 16	02/24/2006	ORDER OF BRIEFING THIS 24TH DAY OF FEBRUARY, 2006, IT IS ORDERED THAT: 1) KATHLEEN A. AMALFITNAO, ESQUIRE, SHALL FILE AN AFFIDAVIT BY APRIL 5, 2006. 2) DEPARTMENT OF JUSTICE SHALL FILE LEGAL MEMORANDUM BY MAY 5, 2006. 3) ANY REPLY BY MOVANT SHALL BE FILED BY JUNE 5, 2006.	FREUD ANDREA MAYBEE
17	02/24/2006	LETTER FROM PARALEGAL OFFICE TO COUNSEL RE: NOTICE THAT THE DEFENDANT HAS FILED MOTION FOR POSTCONVICTION RELIEF, PRO SE.	
18	02/27/2006	COPY OF DOCKET AND INDICTMENT REQUESTED AND SENT.	
19	03/03/2006	AFFIDAVIT OF KATHLEEN AMALFITANO, ESQUIRE, FILED IN RESPONSE TO MOTION FOR POSTCONVICTION RELIEF.	
20	03/09/2006	TRANSCRIPT OF PLEA HEARING & SENTENCING FILED. (S.DOUGHERTY)	
21	06/02/2006	STATE'S RESPONSE TO MOTION FOR POSTCONVICTION RELIEF FILED (ROBERT O'NEILL, JR., ESQUIRE).	
22	08/11/2006	MOTION FOR SANCTIONS FOR DELAY (PRO SE).	
23	08/30/2006	LETTER/ORDER ISSUED BY COMMISSIONER FREUD RE: COURT IS ORDERING DEPARTMENT OF JUSTICE TO FORTHWITH SERVE A COPY OF STATE'S RESPONSE UPON THE DEFENDANT AND FILE A COPY OF THE CERTIFICATE OF SERVICE/MAILING WITH THE COURTBY SEPT 5, 2006, ACCORDINLGY, MOTION FOR SANCTION FOR DELAY IS DISMISSED. DEFENDANT SHALL FILE FINAL REPLY BRIEF WITH THE PROTHONOTARY BY OCTOBER 13, 2006.	FREUD ANDREA MAYBEE

SUPERIOR COURT CRIMINAL DOCKET
(as of 09/06/2007)

Page 3

State of Delaware v. CLARENCE H EDWARDS DOB: 05/30/1961
State's Atty: ROBERT J O'NEILL , Esq. AKA:
Defense Atty: KATHLEEN AMALFITANO , Esq.

No.	Event Date	Event	Judge
24	09/05/2006	CERTIFICATE OF MAILING OF THE STATE'S RESPONSE TO MOTION FOR POSTCONVICTION RELIEF UPON CLARENCE EDWARDS AT DCC (SANDI NICKERSON, DEPARTMENT OF JUSTICE).	
25	09/21/2006	DEFENDANT'S REPLY BRIEF TO THE OPPONENT'S SUBMISSIONS FILED (PRO SE).	
26	09/22/2006	MEMORANDUM FILED FROM PARALEGAL OFFICE TO COMMISSIONER FREUD RE: MOTION FOR POSTCONVICTION RELIEF HAS COMPLETED BRIEFING AND APPEARS READY FOR YOUR HONOR'S REPORT AND RECOMMENDATION.	
27	01/05/2007	CERTIFIED COPY OF DOCKET REQUESTED AND SENT.	
28	03/21/2007	COMMISSIONER'S REPORT AND RECOMMENDATIONS FILED UPON CONSIDERATION OF DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF; RECOMMENDATION THAT THE COURT DENY EDWARDS' MOTION FOR POSTCONVICTION RELIEF AS PROCEDURALLY BARRED.	FREUD ANDREA MAYBEE
29	04/02/2007	APPEAL FILED FROM COMMISSIONER'S REPORT AND RECOMMENDATIONS FILED (PRO SE).	
30	04/04/2007	LETTER FROM PAMELA QUAIL-BRUMMELL, PARALEGAL, TO STEPHEN WELCH, ESQUIRE, FOR ROBERT O'NEILL, ESQUIRE RE: STATE SHALL HAVE 10 DAYS TO RESPOND TO DEFENDANT'S APPEAL OF COMMISSIONER'S REPORT AND RECOMMENDATION.	
31	04/05/2007	MOTION TO AMEND DEFENDANT'S APPEAL TO COMMISSIONER'S REPORT AND RECOMMENDATION FILED (PRO SE). APPROVED - MAY AMEND, BY JUDGE WITHAM 4/16/07.	
32	04/19/2007	LETTER FROM PAMELA QUAIL-BRUMMELL, PARALEGAL, TO STEPHEN WELCH, ESQUIRE, FOR ROBERT O'NEILL, ESQUIRE RE: STATE HAS 10 DAYS TO RESPOND TO DEFENDANT'S MOTION TO AMEND APPEAL FROM COMMISSIONER'S REPORT AND RECOMMENDATION, APPROVED BY JUDGE WITHAM ON 4/16/07.	
33	08/03/2007	CERTIFIED COPY OF DOCKET AND SENTENCE ORDER SENT TO THE DEFENDANT.	
34	08/17/2007	ORDER: NOW, THEREFORE, AFTER A CAREFUL AND DE NOVO REVIEW OF THE RECORD IN THIS CASE, INCLUDING THE APPEAL, AND FOR THE REASONS STATED IN THE COMMISSIONER'S REPORT AND RECOMMENDATION DATED MARCH 21, 2007, IT IS ORDERED THAT THE WELL-REASONED COMMISSIONER'S	VAUGHN JAMES T. JR.

TRUTH-IN-SENTENCING GUILTY PLEA FORM **IN THE SUPERIOR COURT OF THE STATE OF DELAWARE** **IN AND FOR DELT COUNTY**

STATE OF DELAWARE

CLAUENCE K. EDWARDS

ID: 0504022745

CRA: 1K05-05-0179 thru 0181

The defendant must answer the following questions in his or her own handwriting.

Date of Birth 5-30-61 Last grade in school completed 10th

Have you ever been a patient in a mental hospital? ☐ Yes ☒ No
 Are you under the influence of alcohol or drugs at this time? ☐ Yes ☒ No
 Have you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement? ☒ Yes ☐ No
 Have you been promised anything that is not stated in your written plea agreement? ☐ Yes ☒ No
 Has your attorney, the State, or anyone threatened or forced you to enter this plea? ☐ Yes ☒ No

Do you understand that because you are pleading guilty you will not have a trial, and you therefore waive (give up) your constitutional right:
 (1) to be **presumed innocent** until the State can prove each and every part of the charge(s) against you beyond a reasonable doubt;
 (2) to a **speedy and public trial**;
 (3) to **trial by jury**;
 (4) to **hear and question the witnesses** against you;
 (5) to **present evidence** in your defense;
 (6) to **testify** or not testify yourself; and,
 (7) to **appeal** to a higher court?
☒ Yes ☐ No

OFFENSE	STATUTORY PENALTY		TIS GUIDELINE
	Incarceration	Amount of Fine (range if applicable)	
SEXUAL SOLICITATION OF A CHILD	0-15 YRS		0-10 YRS

TOTAL CONSECUTIVE MAXIMUM PENALTY: Incarceration: 15 YRS Fine: _____

NON-CITIZENS: Conviction of a criminal offense may result in deportation, exclusion from the United States, or denial of naturalization.

Do you understand that, if incarcerated, you will not be eligible for parole, and the amount of early release credits which you may earn will be limited to a maximum of ninety (90) days per year? ☒ Yes ☐ No
 Is there a **minimum mandatory penalty**? ☐ Yes ☒ No
 If so, what is it? _____
 Is there a **mandatory revocation of driver's license or privileges** for this offense or as a result of your plea? ☐ Yes ☒ No
 If so, what is the **length of revocation**? _____ years
 Has anyone promised you what your sentence will be? ☐ Yes ☒ No
 Were you on **probation or parole** at the time of this offense? (A guilty plea may constitute a violation.) ☐ Yes ☒ No
 Do you understand that a guilty plea to a felony will cause you to **lose your right to vote, to be a juror, to hold public office, and other civil rights**? ☒ Yes ☐ No
 Have you been advised that this is an offense which results in the loss of the **right to own or possess a deadly weapon**? ☒ Yes ☐ No
 Have you been advised that this is an offense which requires **registration as a sex offender**? ☒ Yes ☐ No
 Are you satisfied with your lawyer's representation of you and that your lawyer has **fully advised you of your rights and of your guilty plea**? ☒ Yes ☐ No
 Have you read and understood all the information contained in this form? ☒ Yes ☐ No

[Signature] Defense Counsel 23 NOV 2005 Date CLAUENCE EDWARDS Defendant
 Print name: KATHLEEN MURPHY Print name: CLAUENCE EDWARDS

Superior Court of the State of Delaware, Kent County

PLEA AGREEMENT

State of Delaware v. CLARENCE H. EDWARDS

Case No(s): 0504022745 Cr.A.#s: 05050179-0181

- ☐ Title 11 HAB. OFFENDER ☐ BOOT CAMP ELIGIBLE ☐ INELIGIBLE
☐ RULE 11(e)(1)(C) — If out of guideline, reason is as follows:
☐ Title 11, § 4336, sex offender notification required ☐ Title 11, § 9019(e), forensic fine ☐ \$100(F), ☐ \$50(M)

Defendant will plead guilty to:

Count	Cr.A.#	Charge [LIO if applicable]
<u>1</u>	<u>05050179</u>	<u>Sexual Solicitation of a Child</u>

Upon the sentencing of the defendant, a nolle prosequi is entered on ☐ the following charges/ ☒ all remaining charges on this indictment:

Count	Cr.A.#	Charge

Sentence Recommendation/Agreement: ☒ PSI ☒ Immediate Sentencing
10 years at L-5 suspended after serving 7 1/2 years
for 1 1/2 years at L-3 followed by 1 year L-2

State and Defendant agree to the following:

- ☐ Restitution:
☒ No contact w/ any child under 18.
☒ Other Conditions:
The defendant agrees to submit to a mental health
evaluation and will follow any treatment recommended.

DAG: Robert J. O'Neill, Jr. DEF. COUNSEL: KATHLEEN AMMERMAN
PRINT NAME PRINT NAME
Robert J. O'Neill Jr. [Signature]
SIGNATURE SIGNATURE

Date: July 26, 2005 DEFENDANT: Clarence Edwards
Exhibit B

ID Number: 00158551

TABLE 9/10 Basic Ed

Bul1/ED

DCC

Subtestsp: Entirl/F NC NA SS GE NP NRS NS OM Predicted GED

Math Compu	E9	35	40	464	4.8	31	4	100	Math	320 I
------------	----	----	----	-----	-----	----	---	-----	------	-------

Applied Math	E9	35	48	468	4.8	31	4	33	I = Instruct
--------------	----	----	----	-----	-----	----	---	----	--------------

Total Math	70	88	466	4.8	32	3	4	T = Test
------------	----	----	-----	-----	----	---	---	----------

L/F=Test Lev & Frm NC=No. Correct NA=No. Attempted
SS=Scale Score GE=Grade Equiv NP=National %ile
NRS=Literary Level NS=National Stan OM=% Obj. Mastered

Objectives	Score	MST	Percent
------------	-------	-----	---------

Math Compu

E11 ADD WHL NUM 7/ 9 + 77

E12 SUB WHL NUM 8 / 8 + . 100

E13 MUL WHL NUM 8/ 8 + 100

E14 DIV WHL NUM 6/ 8 + 75

E15 DECIMALS 6 / 7 + 85

Subtest Avg	88
-------------	----

Applied Math

E21 NUM OPERATN 7/10 P 7A0

E22 COMP CONXTT 6/ 6 +. 100

E23 ESTIMATION 2/ 5 - 40

[illegible]

1H

Test Report for EDWARDS CLARENCE

ID Number: 00158551

Test Date: 02/23/07

Run Date: 02/23/07

Page No: 1

2-22-07 Plmt Proj
TAFE 9/10 Basic Ed
Bu11/ED
DCC

Subtestsp: EntirL/F	NC	NA	SS	GE	NP	NRS	NS	OM	Predicted GED
Math Compu	D0	21	40	488	5.3	43	5	17	

L/F=Test Lev & Frm	NC=No. Correct	NA=No. Attempted
SS=Scale Score	GE=Grade Equiv	NP=National %ile
NRS=Literary Level	NS=National Stan	OM=% Obj: Mastered

Objectives	Score	MST	Percent
------------	-------	-----	---------

Math Compu

D13 MUL WHL NUM	4/ 5	+	80
D14 DIV WHL NUM	3/ 5	P	60
D15 DECIMALS	5/ 8	P	62
D16 FRACTIONS	4/ 8	P	50
D17 INTEGERS	4/ 9	-	44
D18 PERCENTS	1/ 5	-	20
Subtest Avg			53

Exhibit B

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE)	
)	
)	
v.)	IK05-05-0179-R1
)	
CLARENCE H. EDWARDS,)	
)	
Defendant.)	
ID. No. 0504022745)	

Robert J. O'Neill, Jr., Esq., Deputy Attorney General, Department of Justice, for
the State of Delaware.

Clarence H. Edwards, *pro se*.

COMMISSIONER'S REPORT AND RECOMMENDATIONS

Upon Consideration of Defendant's Motion for Postconviction Relief
Pursuant to Superior Court Criminal Rule 61

FREUD, Commissioner
March 21, 2007

The Defendant, Clarence H. Edwards ("Edwards") pled guilty to one count
of Sexual Solicitation of a Child, 11 *Del.C.* § 1112 on August 23, 2005. Had
Edwards gone to trial he was facing the foregoing charge as well as one count of
Indecent Exposure in the First Degree, 11 *Del.C.* §765 and one count of

1E

State v. Edwards

ID No. 0504022745

March 21, 2007

Harassment, 11 *Del.C.* § 1311. In exchange for his plea the State entered a *nolle prosequi* on these counts and agreed to recommend a sentence of seven and a half years in prison. The Court agreed with the State's recommendation and Edwards was sentenced to ten years at Level V, suspended after serving seven years and six months followed by two and one half years of various levels of probation. Edwards did not appeal his conviction to the state Supreme Court, instead, he filed the instant motion for postconviction relief pursuant to Superior Court Criminal Rule 61.

The charges stemmed from two separate incidents with minors. On February 14, 2005, Edwards followed Jennesis Santiago (age 13) in his auto as she walked down the street. She repeatedly crossed the street to avoid Edwards when he yelled to her and asked her approach the vehicle. On April 16, 2005, Edwards offered Alesha Brown ("Brown") (age 12) a ride home after she chased her dog on West North Street. Edwards drove Brown home and she exited the vehicle. Edwards then asked her if she needed money. He then exposed his penis and offered her twenty dollars to touch him.¹

In his motion Edwards lists three grounds for relief:

Ground One: Coerced confession or Guilty plea.

Was told if didn't sign plea would be sentence more time on 2 more counts and had no time to think about it.

Ground Two: Denial of right to confront witnesses.

¹ Affidavit of Probable Cause, April 28, 2005

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March 21, 2007

Was never told of my right to confront or go to trial until after sign plea agreement dated 7/26/2005[Truth-in-sentencing signed after 8/23/2005. .

Ground Three: Ineffective assistance of counsel by not guarding my due process rights and letting me know my rights before my plea agreement didn't represent me fully.

The Court notes that Edwards has filed a motion only, with no supporting memorandum. The grounds listed above constitute Edwards' assertions *in toto*.

Under Delaware law this Court must first determine whether Edwards has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claim.² This is Edwards' first motion for postconviction relief and it was filed within one year of his conviction becoming final, so the requirements of Rule 61(i): (1) requiring filing within one year and (2) requiring that all grounds for relief be presented in initial Rule 61 motion, are met. Edwards' claims were not raised at the plea or sentencing. Therefore, they are barred by Rule 61(i)(3), absent a demonstration of cause for the default and prejudice. All of Edwards' contentions can be construed as based on ineffective assistance of counsel; thus should he be able to demonstrate his counsel was in fact ineffective, he will have alleged sufficient cause for his failure to have raised these claims earlier.

² *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

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Rule 61(i)(3) does not bar relief at this point as to Edwards' grounds for relief should he demonstrate that his counsel was ineffective and that he was prejudiced by counsel's actions. To prevail on his claims of ineffective assistance of counsel, Edwards must meet the two prong test of *Strickland v. Washington*.³ In the context of a guilty plea challenge, *Strickland* requires a defendant show: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that counsel's actions were prejudicial to him in that there is a reasonable probability that, but for counsel's error, he would not have pled guilty and would have insisted on going to trial and that the result of a trial would have been his acquittal.⁴ The failure to establish that a defendant would not have pled guilty and would have proceeded to trial is sufficient cause for denial of relief.⁵ In addition, Delaware courts have consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.⁶ When examining the representation of counsel pursuant to the first prong of the *Strickland* test, there is a strong

³ 466 U.S. 668 (1984); *Larson v. State*, 1995 Del. LEXIS 238; *Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992); *Albury v. State*, 551 A.2d 53 (Del. 1988).

⁴ *Hill v. Lockhart*, 474 U.S. 52, 57, 59 (1985); *Strickland*, 466 U.S. at 688, 694; accord *Larson*, 1995 Del. LEXIS 238; *Blanchfield v. State*, 1994 Del. LEXIS 238; *Skinner*, 607 A.2d at 1172; *Albury*, 551 A.2d at 58.

⁵ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁶ *Younger*, 580 A.2d at 556; *Skinner v. State*, 1994 WL 91138 (Del. 1994).

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March 21, 2007

presumption that counsel's conduct was professionally reasonable.⁷ This standard is highly demanding.⁸ *Strickland* mandates that when viewing counsel's representation, this Court must endeavor to "eliminate the distorting effects of hindsight."⁹

Following a complete review of the record in this matter, it is abundantly clear that Edwards has failed to allege any facts sufficient to substantiate his claim that his attorney was ineffective. I find counsel's affidavit, in conjunction with the record, more credible than Edwards' vague contention that his counsel's representation was ineffective. Edwards was facing trial on serious charges and risked being sentenced to a substantial period of time in prison. Edwards' counsel was able to negotiate a plea bargain with the State which resulted in only seven and a half years of incarceration. Edwards and his attorney discussed the case prior to the entry of the plea. The case against Edwards was strong. The plea bargain was clearly advantageous to Edwards. Counsel's representation was certainly well within the range required by *Strickland*. Additionally, when Edwards entered his guilty plea, he stated he was satisfied with defense counsel's performance. He is bound by his statement unless he presents clear and convincing evidence to the

⁷ *Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. 689); see also *Larson*, 1995 Del. LEXIS 238; *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁸ *Flamer*, 585 A.2d at 754.

⁹ *Strickland*, 466 U.S. at 639.

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contrary.¹⁰ Consequently, Edwards has failed to establish that his counsel's representation was ineffective under the *Strickland* test.

Even assuming, *arguendo*, that counsel's representation of Edwards was somehow deficient, Edwards must satisfy the second prong of the *Strickland* test, prejudice. In setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk dismissal.¹¹ In an attempt to show prejudice, Edwards simply asserts that his counsel was ineffective. His statements are insufficient to establish prejudice.

To the extent that Edwards alleges his plea was involuntary, the record clearly contradicts such an allegation. When addressing the question of whether a plea was constitutionally knowing and voluntary, the Court looks to the plea colloquy to determine if the waiver of constitutional rights was knowing and voluntary.¹² At the guilty-plea hearing, the Court asked Edwards whether he understood the nature of the charges, the consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Edwards if he understood he would waive his constitutional rights if he pled guilty, if he understood each of the constitutional rights listed on the Truth-in-Sentencing Guilty Plea Form ("Guilty Plea Form"), and

¹⁰ *Blanchfield*, 1994 Del. LEXIS 238; *Mapps v. State*, 1994 Del. LEXIS 94 (citing *Sullivan v. State*, 636 A.2d 931, 937-938 (Del. 1994)).

¹¹ *Larson*, 1995 Del. LEXIS 238; *Younger*, 580 A.2d at 556.

¹² *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

State v. Edwards

ID No. 0504022745

March 21, 2007

whether he gave truthful answers to all the questions on the form. The Court asked Edwards if he had discussed the guilty plea and its consequences fully with his attorney. The Court asked Edwards if he was giving the plea of his own free will because he was in fact guilty. The Court also asked Edwards if he was satisfied with his counsel's representation. Finally, the Court asked Edwards if he was in fact guilty of the charge. Edwards answered each of these questions clearly and affirmatively.¹³ Edwards' counsel, in her affidavit, detailed their discussions and clearly Edwards was in no way coerced to enter his plea. I find counsel's representations far more credible than Edwards' self-serving, vague allegations.

Furthermore, prior to entering his guilty plea, Edwards signed a Guilty Plea Form and Plea Agreement in his own handwriting. Edwards' signatures on the forms indicate that he understood the constitutional rights he was relinquishing by pleading guilty and that he freely and voluntarily decided to plead guilty to the charges listed in the Plea Agreement. Edwards is bound by the statements he made on the signed Guilty Plea Form unless he proves otherwise by clear and convincing evidence.¹⁴ I confidently find that Edwards entered his guilty plea knowingly and

¹³ *State v. Edwards*, Del. Super., ID No. 0504022745 (Aug. 23, 2005), tr. at 3- 8.

¹⁴ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Hickman v. State*, 1994 Del. LEXIS 320; *Smith v. State*, 571 A.2d 788 (Del. 1990); see also *Sullivan*, 636 A.2d at 938 (ruling the fact that defendant filled out Truth-In-Sentencing Guilty Plea Form in defendant's own handwriting supported the Superior Court's conclusion that defendant's decision to plead guilty was knowing and voluntary).

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March 21, 2007

voluntarily and that Edwards' first ground for relief is completely meritless.

I find that Edwards' counsel represented him in a competent and effective manner and that Edwards has failed to demonstrate any prejudice stemming from the representation. I also find that Edwards' guilty plea was entered knowingly and voluntarily. Consequently, I recommend that the Court *deny* Edwards' motion for postconviction relief as procedurally-barred.


Commissioner

AMF/ds

cc: Prothonotary

cc: Hon. William L. Witham, Jr.

Kathleen K. Amalfitano, Esq.

File

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLARENCE H. EDWARDS,)	
)	
Defendant-Below,)	
Appellant)	
)	
v.)	No. 445, 2007
)	
STATE OF DELAWARE,)	
)	
Plaintiff-Below,)	
Appellee)	

MOTION TO AFFIRM

Pursuant to Rule 25(a), the State of Delaware moves to affirm the judgment of the Superior Court on the grounds that it is manifest on the face of the opening brief that the appeal is without merit for the following reasons:

1. The Kent County grand jury on July 5, 2005 indicted Clarence H. Edwards, charging him with sexual solicitation of a child, first degree indecent exposure, and harassment. (Dkt. Entries at 1, attached as Ex. A). (The circumstances leading to the charges are outlined in the Report and Recommendation of the Superior Court Commissioner. (Ex. E at 2).) Pursuant to a plea agreement, Edwards pled guilty on August 23,

2005 to sexual solicitation of a child; the prosecution agreed to dismiss the other two counts of the indictment. (Ex. B & C). Following the guilty plea colloquy, the Superior Court immediately sentenced Edwards to 10 years Level V imprisonment, suspended after 7½ years imprisonment for 2½ years of decreasing levels of probation. (Ex. D at 8-9). Edwards did not appeal from his 2005 conviction and sentence.

2. In February 2006, Edwards filed a motion for post-conviction relief in the Superior Court. (Ex. A at 1-2; Appellant's Appendix at 1c). After receiving responses to the motion from Edwards' former counsel and the prosecution, the Superior Court Commissioner to whom the case had been referred recommended that Edwards' motion be denied. (Ex. E). By order of August 17, 2007, the Superior Court adopted the Commissioner's Report and Recommendation and denied post-conviction relief. (Ex. F).

3. The Superior Court did not abuse its discretion by denying relief. Edwards' first claim was that his guilty plea was coerced; according to Edwards, he was told that in the absence of the guilty plea, he would be sentenced to more prison time. Given that the plea agreement resulted in the prosecution's *nolle prosequi* of two additional

charges, Edwards' factual premise is correct. The problem for Edwards is that as a matter of law, his decision to plead guilty in order to avoid the risk of additional prison time is not "coercion." *Brady v. United States*, 397 U.S. 742, 751-52 (1970) ("We decline to hold, however, that a guilty plea is compelled and invalid under the Fifth Amendment whenever motivated by the defendant's desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged."). Contrary to Edwards' thinking, his right to confront his two twelve and thirteen year old accusers was waived by his 2005 guilty plea. *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003). The related contention that the guilty plea was involuntary is contradicted by the defendant's statements during the guilty plea colloquy (Ex. D) and the representation contained in the Truth-In-Sentencing Guilty Plea Form (Ex. C). In the absence of clear and convincing evidence otherwise, Edwards is now bound by his statements at the plea colloquy and on the guilty plea form. *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

4. Edwards also contends that he received ineffective assistance of counsel because his due process rights were not protected and he was not advised of his rights before entry of the guilty plea. As the Commissioner observed in her report (Ex. E at 6-8), that contention is also contradicted by the guilty plea form (Ex. C) and the plea colloquy (Ex. D). Edwards points to no specific due process deficiency and none is apparent from the record. Edwards did not establish either that counsel's performance was unreasonable or that, but for counsel's alleged deficiencies, there is a reasonable probability that he would not have pled guilty and would have elected to proceed to trial. *See Hill v. Lockhart*, 474 U.S. 52, 57, 59 (1985); *Albury v. State*, 551 A.2d 53, 58 (Del. 1988). Superior Court, accordingly, correctly denied Edwards' motion for post-conviction relief.

5. The judgment of the Superior Court should be affirmed.

/s/ John Williams
John Williams
Deputy Attorney General
Department of Justice
102 West Water Street
Dover, DE 19904-6750
(302) 739-4211 (ext. 263)
I.D. # 365

November 1, 2007

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE) C.A. No. IK05-05-0179
)
)
vs.)
)
CLARENCE H. EDWARDS,)
I.D. No. 0504022745)
Defendant.) Plea and Sentencing
August 23, 2005

* * * * *

BEFORE: HON. WILLIAM L. WITHAM, JR., RESIDENT JUDGE

* * * * *

APPEARANCES:

GREGORY R. BABOWAL, ESQUIRE
Deputy Attorney General
on behalf of the State of Delaware.

KATHLEEN K. AMALFITANO, ESQUIRE
Assistant Public Defender
on behalf of the Defendant.

TRANSCRIPT OF PLEA AND SENTENCING

Tuesday, August 23, 2005

SHEILA A. DOUGHERTY
Official Court Reporter

RECEIVED AND
FILED
06 MAR -9 PM 4:04
KENT COUNTY
PROTHONOTARY

Exhibit D

19
APM

2

Courtroom No. 1
August 23, 2005

PRESENT: As noted.

* * * * *

MR. BABOWAL: Your Honor, Number 22, Mr. Edwards, is going to be a plea. Pleading guilty to Count 5, 05-05-0179, sexual solicitation of a child. State will enter a nolle prosequi on the remaining charges. Immediate sentencing, ten years Level 5, suspended after serving seven and a half years for one and a half years at Level 3, followed by one year Level 2. No contact with any child under the age of 18. Defendant agrees to submit to a mental health evaluation and will follow any treatment recommended. That is the entire agreement, Your Honor.

MS. AMALFITANO: Your Honor, this is Clarence Edwards. I have reviewed the plea agreement and the Truth in Sentencing Guidelines. I have also reviewed the evidence that the State has. I believe there is sufficient evidence for the State to go forward, and it is in Mr. Edwards' best interest to enter into this plea agreement.

I believe he is entering a knowing,

1 intelligent and voluntary plea, and I present him to
2 the Court.

3 THE COURT: All right.

4 * * * * *

5 CLARENCE H. EDWARDS

6 * * * * *

7 the Defendant herein, being duly sworn,
8 was examined and testified as follows:

9 THE COURT: Mr. Edwards, did you hear
10 everything that your attorney stated on the record
11 about this plea?

12 THE DEFENDANT: Yes.

13 THE COURT: Thank you. Do you understand
14 what he has indicated to the Court -- what she has
15 indicated to the Court?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you have any questions
18 about your plea so far?

19 THE DEFENDANT: No.

20 THE COURT: All right. Do you understand
21 you have a right to speedy trial with the assistance
22 of a lawyer, but you waive that right if you enter a
23 plea today?

1 THE DEFENDANT: Yes.

2 THE COURT: You will have the benefit of
3 having counsel represent you at sentencing if I
4 accept this plea, but you also need to understand
5 this plea agreement is merely a recommendation only
6 to the Court. The Court does not have to follow it.
7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Thank you. Having said that,
10 we are going to be going over two documents, the
11 plea agreement as well as the Truth in Sentencing
12 forms, and I would ask whether you have copies of
13 these in front of you.

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. The two forms as well
16 as what counsel has told the Court indicate that you
17 are going to enter a plea to one count of sexual
18 solicitation of a child. This is a felony. It
19 carries a maximum potential exposure for you up to
20 15 years in jail, Level 5, plus a fine to be
21 determined by the Court. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Thank you. The Truth in

6

1 THE DEFENDANT: No.

2 THE COURT: Okay. Do you understand the
3 nature of this charge against you?

4 THE DEFENDANT: Yes.

5 THE COURT: Has anyone forced or
6 threatened you with respect to this offense?

7 THE DEFENDANT: No.

8 THE COURT: And are you in fact guilty of
9 this offense?

10 THE DEFENDANT: No.

11 THE COURT: You are not guilty?

12 THE DEFENDANT: Yes. I am sorry. Yes.

13 THE COURT: You are guilty? All right.

14 Did you sign this form?

15 THE DEFENDANT: Yes.

16 THE COURT: And did you also sign the plea
17 agreement form?

18 THE DEFENDANT: Yes.

19 THE COURT: And does the plea agreement
20 form reflect everything that you have agreed to do
21 in this case?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you had sufficient time

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1 to review the matter with your attorney?

2 THE DEFENDANT: Yes.

3 THE COURT: Thank you. And has your
4 attorney fully advised you of your rights pertaining
5 to your plea?

6 THE DEFENDANT: Yes.

7 THE COURT: Has she otherwise represented
8 you in that case to your satisfaction?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Thank you.

11 THE DEFENDANT: You are welcome.

12 THE COURT: Ms. Amalfitano and
13 Mr. Babowal, any reason why the Court should not
14 accept the plea?

15 MS. AMALFITANO: No, Your Honor.

16 MR. BABOWAL: No, Your Honor.

17 THE COURT: All right. Very good. The
18 Court finds the plea is made knowingly and
19 voluntarily with an understanding of the plea as
20 well as the consequences. The plea will be
21 accepted.

22 Any additional comments, counsel?

23 MS. AMALFITANO: No, Your Honor.

1 THE COURT: Any comments from Mr. Edwards
2 about this matter?

3 THE DEFENDANT: No, sir. I am just hoping
4 that I could have got some more probation. That is
5 all.

6 THE COURT: All right.

7 THE DEFENDANT: Thank you, sir. That's
8 all.

9 THE COURT: All right. Thank you.

10 THE DEFENDANT: You are welcome.

11 THE COURT: Mr. Babowal, any comments?

12 MR. BABOWAL: No, Your Honor.

13 THE COURT: All right. Very good.

14 All right. Very good. I have read the
15 file and I will follow the recommendation that the
16 parties have worked out in this regard.

17 Therefore, it is the order of the Court
18 Mr. Edwards shall be adjudicated guilty of the
19 offense as charged. That is in connection with
20 05-05-0179. He shall pay the cost of prosecution,
21 plus all statutory surcharges.

22 With respect to the offense, he shall be
23 sentenced as follows: Court will sentence him to

1 ten years Level 5, suspended after serving seven and
2 one-half years, to be followed by one and a half
3 years at Level 3, followed by one year Level 2.

4 Because of the nature of the offense the statute
5 allows this matter -- allows the Court to sentence
6 him to a longer period of probation than would
7 normally occur. It is a sexual offense case.

8 The Court will also order no contact with
9 any child under the age of 18, and also the
10 defendant will also submit to a mental health
11 evaluation and follow any treatment that may be
12 recommended.

13 Is there credit time to be given to
14 Mr. Edwards?

15 MS. AMALFITANO: Yes, Your Honor.
16 April 28.

17 THE COURT: April 28. All right. The
18 effective date of this order will be April 28.

19 THE CLERK: Your Honor, may I approach?

20 (A sidebar conference was held off
21 the record.)

22 THE COURT: All right. Is there an
23 agreement with respect to the tier level?

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1 MS. AMALFITANO: Tier II, Your Honor.

2 THE COURT: All right. Does the State
3 agree?

4 MR. FAVATA: Yes, Your Honor.

5 THE COURT: All right. Since the parties
6 have agreed there is no need for a hearing on the
7 tier level. Therefore, the tier level will be Level
8 II.

9 That is all. Good luck to you.

10 MS. AMALFITANO: Thank you, Your Honor.

11 * * * * *

12 (Whereupon the proceedings were
13 concluded.)

14 * * * * *

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CERTIFICATE OF REPORTER

I, Sheila Dougherty, RMR and Official Court Reporter of the Superior Court, State of Delaware, do hereby certify that the foregoing is an accurate transcript of the testimony adduced and proceedings had, as reported by me, in the Superior Court of the State of Delaware, in and for Kent County, in the case therein stated, as the same remains of record in the office of the Prothonotary of Kent County, at Dover, Delaware.

WITNESS my hand this 9th day of

March, A.D., 2006.

Sheila A. Dougherty
Sheila A. Dougherty
Official Court Reporter
Certificate No. 142-PS
Expiration: Permanent

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE)
)
)
 v.) IK05-05-0179-R1
)
 CLARENCE H. EDWARDS,)
)
 Defendant.)
 ID. No. 0504022745)

Robert J. O'Neill, Jr., Esq., Deputy Attorney General, Department of Justice, for
the State of Delaware.

Clarence H. Edwards, *pro se*.

COMMISSIONER'S REPORT AND RECOMMENDATIONS

Upon Consideration of Defendant's Motion for Postconviction Relief
Pursuant to Superior Court Criminal Rule 61

FREUD, Commissioner
March 21, 2007

The Defendant, Clarence H. Edwards ("Edwards") pled guilty to one count
of Sexual Solicitation of a Child, 11 Del.C. § 1112 on August 23, 2005. Had
Edwards gone to trial he was facing the foregoing charge as well as one count of
Indecent Exposure in the First Degree, 11 Del.C. §765 and one count of

Exhibit E

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Harassment, 11 *Del.C.* § 1311. In exchange for his plea the State entered a *nolle prosequi* on these counts and agreed to recommend a sentence of seven and a half years in prison. The Court agreed with the State's recommendation and Edwards was sentenced to ten years at Level V, suspended after serving seven years and six months followed by two and one half years of various levels of probation. Edwards did not appeal his conviction to the state Supreme Court, instead, he filed the instant motion for postconviction relief pursuant to Superior Court Criminal Rule 61.

The charges stemmed from two separate incidents with minors. On February 14, 2005, Edwards followed J [REDACTED] S [REDACTED] (age 13) in his auto as she walked down the street. She repeatedly crossed the street to avoid Edwards when he yelled to her and asked her approach the vehicle. On April 16, 2005, Edwards offered A [REDACTED] B [REDACTED] ("B [REDACTED]") (age 12) a ride home after she chased her dog on West North Street. Edwards drove B [REDACTED] home and she exited the vehicle. Edwards then asked her if she needed money. He then exposed his penis and offered her twenty dollars to touch him.¹

In his motion Edwards lists three grounds for relief:

Ground One: Coerced confession or Guilty plea.

Was told if didn't sign plea would be sentence more time on 2 more counts and had no time to think about it.

Ground Two: Denial of right to confront witnesses.

¹ Affidavit of Probable Cause, April 28, 2005

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Was never told of my right to confront or go to trial until after sign plea agreement dated 7/26/2005[Truth-in-sentencing signed after 8/23/2005.

Ground Three: Ineffective assistance of counsel by not guarding my due process rights and letting me know my rights before my plea agreement didn't represent me fully.

The Court notes that Edwards has filed a motion only, with no supporting memorandum. The grounds listed above constitute Edwards' assertions *in toto*.

Under Delaware law this Court must first determine whether Edwards has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claim.² This is Edwards' first motion for postconviction relief and it was filed within one year of his conviction becoming final, so the requirements of Rule 61(i): (1) requiring filing within one year and (2) requiring that all grounds for relief be presented in initial Rule 61 motion, are met. Edwards' claims were not raised at the plea or sentencing. Therefore, they are barred by Rule 61(i)(3), absent a demonstration of cause for the default and prejudice. All of Edwards' contentions can be construed as based on ineffective assistance of counsel; thus should he be able to demonstrate his counsel was in fact ineffective, he will have alleged sufficient cause for his failure to have raised these claims earlier.

² *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

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Rule 61(i)(3) does not bar relief at this point as to Edwards' grounds for relief should he demonstrate that his counsel was ineffective and that he was prejudiced by counsel's actions. To prevail on his claims of ineffective assistance of counsel, Edwards must meet the two prong test of *Strickland v. Washington*.³ In the context of a guilty plea challenge, *Strickland* requires a defendant show: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that counsel's actions were prejudicial to him in that there is a reasonable probability that, but for counsel's error, he would not have pled guilty and would have insisted on going to trial and that the result of a trial would have been his acquittal.⁴ The failure to establish that a defendant would not have pled guilty and would have proceeded to trial is sufficient cause for denial of relief.⁵ In addition, Delaware courts have consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.⁶ When examining the representation of counsel pursuant to the first prong of the *Strickland* test, there is a strong

³ 466 U.S. 668 (1984); *Larson v. State*, 1995 Del. LEXIS 238; *Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992); *Albury v. State*, 551 A.2d 53 (Del. 1988).

⁴ *Hill v. Lockhart*, 474 U.S. 52, 57, 59 (1985); *Strickland*, 466 U.S. at 688, 694; accord *Larson*, 1995 Del. LEXIS 238; *Blanchfield v. State*, 1994 Del. LEXIS 238; *Skinner*, 607 A.2d at 1172; *Albury*, 551 A.2d at 58.

⁵ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁶ *Younger*, 580 A.2d at 556; *Skinner v. State*, 1994 WL 91138 (Del. 1994).

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presumption that counsel's conduct was professionally reasonable.⁷ This standard is highly demanding.⁸ *Strickland* mandates that when viewing counsel's representation, this Court must endeavor to "eliminate the distorting effects of hindsight."⁹

Following a complete review of the record in this matter, it is abundantly clear that Edwards has failed to allege any facts sufficient to substantiate his claim that his attorney was ineffective. I find counsel's affidavit, in conjunction with the record, more credible than Edwards' vague contention that his counsel's representation was ineffective. Edwards was facing trial on serious charges and risked being sentenced to a substantial period of time in prison. Edwards' counsel was able to negotiate a plea bargain with the State which resulted in only seven and a half years of incarceration. Edwards and his attorney discussed the case prior to the entry of the plea. The case against Edwards was strong. The plea bargain was clearly advantageous to Edwards. Counsel's representation was certainly well within the range required by *Strickland*. Additionally, when Edwards entered his guilty plea, he stated he was satisfied with defense counsel's performance. He is bound by his statement unless he presents clear and convincing evidence to the

⁷ *Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. 689); see also *Larson*, 1995 Del. LEXIS 238; *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁸ *Flamer*, 585 A.2d at 754.

⁹ *Strickland*, 466 U.S. at 639.

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contrary.¹⁰ Consequently, Edwards has failed to establish that his counsel's representation was ineffective under the *Strickland* test.

Even assuming, *arguendo*, that counsel's representation of Edwards was somehow deficient, Edwards must satisfy the second prong of the *Strickland* test, prejudice. In setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk dismissal.¹¹ In an attempt to show prejudice, Edwards simply asserts that his counsel was ineffective. His statements are insufficient to establish prejudice.

To the extent that Edwards alleges his plea was involuntary, the record clearly contradicts such an allegation. When addressing the question of whether a plea was constitutionally knowing and voluntary, the Court looks to the plea colloquy to determine if the waiver of constitutional rights was knowing and voluntary.¹² At the guilty-plea hearing, the Court asked Edwards whether he understood the nature of the charges, the consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Edwards if he understood he would waive his constitutional rights if he pled guilty, if he understood each of the constitutional rights listed on the Truth-in-Sentencing Guilty Plea Form ("Guilty Plea Form"), and

¹⁰ *Blanchfield*, 1994 Del. LEXIS 238; *Mapps v. State*, 1994 Del. LEXIS 94 (citing *Sullivan v. State*, 636 A.2d 931, 937-938 (Del. 1994)).

¹¹ *Larson*, 1995 Del. LEXIS 238; *Younger*, 580 A.2d at 556.

¹² *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

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whether he gave truthful answers to all the questions on the form. The Court asked Edwards if he had discussed the guilty plea and its consequences fully with his attorney. The Court asked Edwards if he was giving the plea of his own free will because he was in fact guilty. The Court also asked Edwards if he was satisfied with his counsel's representation. Finally, the Court asked Edwards if he was in fact guilty of the charge. Edwards answered each of these questions clearly and affirmatively.¹³ Edwards' counsel, in her affidavit, detailed their discussions and clearly Edwards was in no way coerced to enter his plea. I find counsel's representations far more credible than Edwards' self-serving, vague allegations.

Furthermore, prior to entering his guilty plea, Edwards signed a Guilty Plea Form and Plea Agreement in his own handwriting. Edwards' signatures on the forms indicate that he understood the constitutional rights he was relinquishing by pleading guilty and that he freely and voluntarily decided to plead guilty to the charges listed in the Plea Agreement. Edwards is bound by the statements he made on the signed Guilty Plea Form unless he proves otherwise by clear and convincing evidence.¹⁴ I confidently find that Edwards entered his guilty plea knowingly and

¹³ *State v. Edwards*, Del. Super., ID No. 0504022745 (Aug. 23, 2005), tr. at 3-8.

¹⁴ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Hickman v. State*, 1994 Del. LEXIS 320; *Smith v. State*, 571 A.2d 788 (Del. 1990); see also *Sullivan*, 636 A.2d at 938 (ruling the fact that defendant filled out Truth-In-Sentencing Guilty Plea Form in defendant's own handwriting supported the Superior Court's conclusion that defendant's decision to plead guilty was knowing and voluntary).

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March 21, 2007

voluntarily and that Edwards' first ground for relief is completely meritless.

I find that Edwards' counsel represented him in a competent and effective manner and that Edwards has failed to demonstrate any prejudice stemming from the representation. I also find that Edwards' guilty plea was entered knowingly and voluntarily. Consequently, I recommend that the Court *deny* Edwards' motion for postconviction relief as procedurally-barred.


Commissioner

AMF/ds

cc: Prothonotary
cc: Hon. William L. Witham, Jr.
Kathleen K. Amalfitano, Esq.
File

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,

)

)

I.D. No. 0504022745

v.

)

)

CLARENCE H. EDWARDS,

)

)

Defendant.

)

O R D E R

On this 17th day of August, 2007, upon consideration of the Defendant's Motion for Postconviction Relief, the Commissioner's Report and Recommendation, and the record in this case, it appears that:

(1) The defendant, Clarence H. Edwards, pled guilty to one count of Sexual Solicitation of a Child, 11 *Del. C.* § 1112. Had he gone to trial, Defendant was facing the foregoing charge plus one count of Indecent Exposure First Degree, 11 *Del. C.* § 765 and one count of Harassment, 11 *Del. C.* § 1311.

(2) The defendant did not appeal his conviction to the Delaware Supreme Court, but filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61.

(3) The matter was referred to the Court Commissioner for findings of fact and recommendation pursuant to 10 *Del. C.* § 512(b) and Superior Court Criminal Rule 62. The Commissioner filed a Report and Recommendation recommending that the Court deny defendant's motion for postconviction relief. The Defendant filed an appeal to the Commissioner's Report and Recommendation. However, both the State and former Defense Counsel have not filed responses to the appeal.

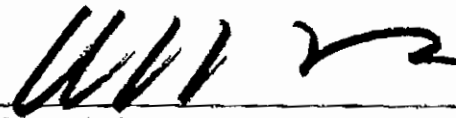
Exhibit F

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State v. Clarence H. Edwards
ID No. 0504022745
August 17, 2007

NOW, THEREFORE, after a careful and *de novo* review of the record in this case, including the appeal, and for the reasons stated in the Commissioner's Report and Recommendation dated March 21, 2007,

IT IS ORDERED that the well-reasoned Commissioner's Report and Recommendation is adopted by the Court and defendant's Motion for Postconviction Relief is *denied* as procedurally barred.


Resident Judge

WLW/dmh

cc: Prothonotary

xc: Hon. Andrea M. Freud

Stephen W. Welch, Jr., Esquire

Kathleen K. Amalfitano, Esquire

Mr. Clarence H. Edwards, *pro se*

Order Distribution (w/Report & Recommendation)

File

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on November 1, 2007, he caused two copies of the attached document to be placed in the U.S. Mail, first class postage prepaid, addressed to the following:

Clarence H. Edwards
No. 158551
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, DE 19977

/s/ John Williams
John Williams
Deputy Attorney General
Dept. of Justice

